



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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CITY ATTORNEY POINTS TO 1957 KENNEDY SPEECH CHALLENGING LEGAL PROFESSION TO EXERCISE INDEPENDENCE AND CRITICAL JUDGMENT

Aguirre to Hold Public Seminar on Historical Role of the San Diego City Attorney

San Diego, CA—Brandishing a 1957 speech delivered by Senator John F. Kennedy on labor union racketeering, City Attorney Michael Aguirre today reasserted his contention that San Diego voters got it right in 1931 when they approved the San Diego City Charter that included an independently elected City Attorney.

In his speech, Senator Kennedy stressed that:

“the Canons of Professional Ethics promulgated by the American Bar Association, as I understand them, make it unprofessional for...an attorney [to] forward his clients interest by unethical or illegal means...Moreover he has an express duty to attempt to restrain and prevent his clients’ improprieties, including ‘doing those things which the lawyer himself ought not to do.’”

“John Kennedy knew well that the duty of the legal profession was not to rubber-stamp illegal client behavior but rather vigorously advise clients to follow the rule of law,” Aguirre stated.

Kennedy continued by elaborating on the attorney-client relationship:

“A lawyer who is retained by a labor union is the union's representative. His client is not the union president or the officers or the members of the executive committee--his client is the union. He is paid with union funds, dues collected from the members, and it is to them as an organization that his true professional responsibility runs. That organization is something bigger and more important than the persons who temporarily hold office in it. The officers, like the officers of a corporation, are themselves only the servants of the broader membership. They, too, are subject to fiduciary principles. They hold the funds of the union in trust, and must manage its affairs to serve not their private ends but the larger interests of the organization. How, then, can the union's lawyer take fees from the union treasury to defend its officers against the charge of embezzling from that same treasury?”

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“So it is for the Office of the San Diego City Attorney,” said City Attorney Aguirre. “While we represent the City and its Departments in court and provide legal advice throughout the year, we cannot represent individual elected officials if they are accused of engaging in illegal behavior.”

Our allegiance is to the citizens of San Diego remarked Aguirre and in the words of John Kennedy to “*the eternal wisdom of Justice Stone’s reminder that ‘the great figures of the law stir the imagination and inspire our reverence according as they have used their special training and gifts for the advancement of the public interest.’*”

Kennedy cited the insistence of Supreme Court Justice Harlan Stone that it was the professional responsibility of the bar not to allow its members to surrender “*the function of independent and critical judgment which has been the historic pride of the legal profession—a judgment that never spared and often guided the clients to be served.*”

Aguirre said it is his obligation to continue to challenge City officials to reverse their decisions made in 1996 and 2002 that increased employee benefits in exchange for allowing the City to underfund the city pension system. He contends it was part of a scheme by City Hall insiders to rig the pension system and move hundreds of millions of dollars of pension liabilities to future taxpayers. The pension deals have left city taxpayers on the hook for the over \$2.3 billion in pension fund liability.

Noting that his Senate Committee over the past year has “*held up to public and congressional view a long list of malpractices currently characterizing the small racketeering element in our trade union movement...made possible by the active assistance by some members of the bar*”, Senator Kennedy asked: “*Where are the members of the bar who will prove their title to professional leadership by taking the lead in seeking to remove this stain on the name of their calling? Where is the Justice Stone of today who will rise up to indict this corruption and complaisance, this deceit and dishonor?*”

According to Aguirre, the City of San Diego has history of experience in the arena of public reform and members of the San Diego Bar played a significant role by stepping forward to support an elected city attorney. In 1929, voters in San Diego had defeated a city charter proposal to create a strong city manager form of government, a proposal which included an appointed City Attorney.

Voters elected a second charter commission with 15 members on August 26, 1930, and it set out to revise the city charter proposal that had just gone down to defeat. The major component the new charter commission modified was requiring the city attorney to be elected rather than appointed.

Ray Mathewson, the labor union representative on the Freeholder Board, described the role of the independent city attorney in a proposal he submitted to the Freeholder Board:

The duty of the city attorney is to give legal advice to every department and official of the city government on municipal matters. He also must act as the representative of the various departments before the courts. He should occupy an independent position so that his opinions would not be influenced by any appointive

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power. For this reason he should be elected by the people. If elected, the city attorney is in a position of complete independence (sic) and may exercise such check upon the actions of the legislative and executive branches of the local government as the law and his conscience dictates.

On November 11, 1930, the Charter Commission took up the issue of whether to have an elected or appointed city attorney as part of the city charter proposal. With one member out of town, motions to elect or appoint the city attorney failed on 7-7 tie votes.

The Board then turned to the legal community for help and issued a public invitation asking the San Diego Bar to attend the Board's next meeting the following evening November 12. The headline in the morning paper read "*LAWYERS ARE ASKED TO AID FREEHOLDERS*", and the story began:

Local attorneys are invited to attend the meeting of the board of freeholders in the director's room of the San Diego Museum, Balboa Park, tonight at 7 o'clock, to help the charter framers solve this question: Under the new charter, should the city attorney be elected by the people or should he be chosen by the council?"

The thinking of Commission members who favored a city attorney elected by the people was discussed in the same news article:

Those of the freeholders who favor election by the people feel that the city attorney should be a check on the council and the city manager, and that only his election by the people will give him the necessary independence of action.

That evening the Commission adopted a motion "that the city attorney be elected by the people," rejecting the idea that the City Attorney was "only the council's lawyer." The minutes of the meeting recorded the fact that several attorneys from the City attended and supported the idea of an elected city attorney.

The morning paper heralded the decision, "*CITY ATTORNEY TO BE ELECTIVE, BOARD DECIDES*" and included:

"The action of the board relative to the election by the people of the city attorney followed considerable discussion between the freeholders and local attorneys."

The main election pamphlet urging voters to approve the new city charter said of an Independent City Attorney:

The city attorney is to be elected by the people. This is a guarantee that the legal head of the government will be able to fearlessly protect interests of all San Diego and not merely be an attorney appointed to carry out wishes of council or manager.

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The editor and publisher of The Hillcrest News, James Parsons, in an article entitled “*Give San Diego a New Deal*”, said of the city attorney:

The city attorney is to be elected by the people as a guarantee that the legal head of the city will be able to fearlessly protect our interests and not an attorney appointed to carry out the wishes of council or manager.

On April 7, 1931, San Diego voters adopted the new city charter, with the provision that the city attorney was to be elected by the people of San Diego. The vote was 79.76% in favor and 20.24% against.

City Attorney Aguirre will conduct a public seminar to discuss the historical role of the San Diego City Attorney’s office in local government. The seminar is scheduled for Thursday, February 21 from 6-8 pm in the City Council Chambers located in downtown San Diego at 202 C Street.

In 1957, Senator Kennedy sat on a special committee of the Senate Subcommittee on Permanent Investigations tasked with investigating labor union racketeering. From 1957-1959, the Select Committee on Improper Activities in the Labor or Management Field was chaired by Senator John McClellan of Arkansas and included Senator Kennedy’s brother, Robert F. Kennedy, as its Chief Counsel. The investigation focused on the criminal influence exerted upon the Teamsters Union then headed by Jimmy Hoffa. Other Committee members included Arizona Senator Barry Goldwater and Idaho Senator Frank Church.

Senator Kennedy’s speech to the Phi Alpha Delta Legal Fraternity breakfast at the University of Florida was later printed in the May 1958 issue of the *American Bar Association Journal*, and thereafter in the *Congressional Record*.

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